

In the High Court of Judicature at Madras

Dated: 10/10/2003

Coram

The Honourable Mr. Justice A.K. RAJAN

Writ Petition No.8964 of 2000

R. Krishnan
Hereditary Trustee
A/M Maha Kaliyamman Thirukoil
Korayatrangarai,
Needamangalam
Thirivarur District. Petitioner

-Vs-

1. The Commissioner
Hindu Religious and
Charitable Endowment Department
Uthamar Gandhi Salai,
Chennai.

2. The Executive Officer
A/M Menatchi Chokkanathar
Thirukoil, Mannargudi Town
Thiruvavur District
(now in-charge of)
A/M Maha Kaliyamman
Thirukoil
Korayatrangarai,
Needamangalam
Thirivarur District. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issue of a writ of Certiorari as stated therein.

For petitioner : Mr. V.K. Vijayaraghavan

For respondents : Mr. G. Sukumar for R1

: O R D E R

The writ petition is filed to issue a writ of Certiorari to call for the records of the first respondent in Ref. Rc. No. 86151/99/L5 dated 03.03.2000 and quash the same as illegal, void and arbitrary.

2. The case of the petitioner, in brief is as follows:

The petitioner's father as a hereditary trustee of the Maha

Kaliyamman Temple Korayatrangarai village filed O.A.No. 6 of 1988 on the file of Deputy Commissioner, Hindu Religious and Charitable Endowment Department, Thanjavur for a declaration of his hereditary trusteeship to the said temple, and the Deputy Commissioner passed an order on 07.12.1990 declaring him as hereditary trustee. Subsequently, he died. After his death, his right was succeeded by the petitioner and other legal heirs. The then Inspector of the region, used to compel the petitioner to pass a resolution for appointing executive officer for the above temple, under Section 45(1) of the Act. As he could not resist the force and compulsion, he had to yield to his pressure. The resolution was given to the dictation of the concerned Inspector and the petitioner was not aware of the consequences of the resolution passed and he was compelled to sign in it. The said resolution was sent to the first respondent as if the petitioner was willing for appointment of executive officer for administering the affairs of the temple. Under these circumstances, the resolution purported to have been passed on 06.04.1999 for the appointment of Executive Officer for the second respondent temple, was not legally sustainable and tainted by vitiating circumstances mentioned above. On the basis of the resolution, the first respondent passed the impugned order appointing the second respondent to manage the affairs of the temple. The impugned order is passed without notice to the petitioner and it is in violation of principles of natural justice. Hence, the impugned order is liable to be quashed.

3. Counter-affidavit has been filed by the first respondent wherein it has been stated as follows:

The temple in question is a listed temple. By an order dated 07.12.1990, the Deputy Commissioner appointed one R.Rathnam Pillai as hereditary trustee to the temple. The said hereditary trustee died on 27.09.1991. Thereafter, his son, the writ petitioner was recorded and recognised as hereditary trustee by the Deputy Commissioner in his proceedings dated 20.03.1992 under Section 54(1) of the Act. From the date of inception as hereditary trustee, he was guilty of misfeasance. The accounts of the temple have been periodically audited and it was found that large number of defects in the accounts and a sum of Rs.11,892/- being the cash balance was missing; further a sum of Rs.32,797/- has not been supported by any vouchers. There is no receipt for payment of electricity charges of Rs.1474.20. No proper register was maintained. There is no ledger for jewels. There was no ledger for gifts and donations received like jewels, provisions etc. No permanent receipts were issued. Hundial collections were not brought into account but were stated to have been spent for daily expenses. The auditors have verified the accounts and found that the accounts have not been properly maintained and no explanations were offered for audit objections. In spite of repeated letters for explanation, the petitioner simply sent letters seeking for time. It is further stated that there was no necessity for the Inspector to threaten him to get a resolution and there was no justification for forcible extracting letter from him. The question of principles of natural justice is not attracted in this case. Therefore, no notice is contemplated under law since the appointment of Executive Officer is only after obtaining his consent in writing. In fact, he had been duly given notice for appointment of Executive Officer and he had written to Executive Officer on 17.03.2000 praying for time till 17.04.2000 for delivering all the records and also the management of the temple stating that he will do so after festivals

were over. Conveniently, he has taken time till 17.4.2000 so that the entire income during the festivals which is considerably large will be in his hands. After taking time, he has avoided delivery of the management but he has chosen to approach this Court by way of present writ petition. Having passed a resolution for appointment of Executive Officer, the filing of the writ petition to quash the said order is against law and the petitioner is estopped from doing so. Hence, the writ petition is liable to be dismissed.

4. Mr.Vijayaraghavan, learned counsel appearing for the petitioner has submitted that if the petitioner was found to be guilty of misfeasance, it is open for the respondents to remove him from trusteeship, after conducting enquiry. But even then when a temple is having hereditary trustee, the next legal heir of the person, shall be appointed as trustee. Instead of appointing his successor as hereditary trustee, the Executive Officer has been appointed, which is contrary to law. Before appointing the Executive Officer, the principles of natural justice shall be followed. In support of his contention, he relied on a decision of the Division Bench of this Court in K.Ekambaram and another v. Commissioner HR & CE of Administration Department etc. (1995 2 L.W. 213) wherein the Division Bench of this Court has held as follows:

"It is not possible to hold that Section 45(1) of the Tamil Nadu HR & CE Act excludes the application of principle of natural justice when an Executive Officer is to be appointed on the ground of failure of trustees in performing the functions, and action against trustees cannot be taken or they cannot be deprived of their without affording an opportunity to explain the allegations made against them, depriving of the right vested in them as trustees."

5. Further, learned counsel has relied upon the decision of this Court in Prem Anand v. The Commissioner, H.R.& C.E.etc.1990 (1) Law Weekly, 144 wherein this Court has held as follows:

"Under S.54 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, when a permanent vacancy occurs in the office of the hereditary trustee of a religious institution, the next in the line of succession shall be entitled to succeed to the office. There is no necessity, whatever, for the next hereditary trustee to make an application for being appointed under the Act."

Therefore, inasmuch as hereditary trustee has already been appointed unless he is removed, the Executive Officer cannot be appointed; that too without notice to the petitioner. Therefore, the impugned order is invalid and liable to be quashed.

5. Mr.G.Sukumaran, learned counsel appearing for the respondents submitted that this is not a case of appointing Executive Officer in the vacancy created by trustee, the trustee has not been terminated nor suspended. Therefore, Section 54 of the Act does not come into force in the present case. When the resolution has been passed by the Trustees requesting the Deputy Commissioner to appoint an Executive Officer, the Deputy Commissioner, on the resolution passed by the trustees, appointed the second respondent as the Executive Officer of the temple in question. Hence, the impugned order does not suffer from any illegality.

6. It is to be seen that a letter dated 22.02.1999 had been sent from the Office of the Inspector of H.R.& C.E. Mannargudi in Na.Ka.No.41/1999 wherein it has been stated that in the interest of the

administration of the temple, and in order to facilitate to appoint an Executive Officer under Section 45(1) of the Act, the hereditary trustee shall pass a resolution requesting the Commissioner to appoint a Executive Commissioner, within a period of one week. From this it is seen that a letter has been sent by the office of the Inspector of H.R.&C.E. to pass a resolution to facilitate the department to appoint a Executive Officer under Section 45 of the Act. Pursuant to this letter, the resolution had been passed.

7. It has been stated in the affidavit that this resolution was passed only on compulsion and the same has not been refuted. Therefore, it has to be taken that this resolution was passed only in pursuance of coercive steps taken by the office of the Inspector of H.R.& C.E. and therefore, inasmuch as Executive Officer cannot be appointed in a temple where hereditary trusteeships were appointed. No doubt, there is a resolution to that effect and this resolution has been passed under coercion, and it is not a valid resolution. Consequently, the impugned order is liable to be set aside.

8. It is open to the authorities to take disciplinary action including removal of the hereditary trustee, after following the procedure, and in accordance with the prescribed rules.

With the above observation, the writ petition is ordered. No costs.

Indedx :Yes

Internet:Yes

kvsg

To

1. The Commisioner
Hindu Religious and
Charitable Endowment Department
Uthamar Gandhi Salai,
Chennai.

2. The Executive Officer
A/M MenatchiChokkanathar
Thirukoil, Mannargudi Town
Thiruvarur District
(now in-charge of)
A/M Maha Kaliamman
Thirukoil
Korayatrangarai,
Needamangalam
Thrivarur District.

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